

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

-----x  
UNITED STATES OF AMERICA :  
versus : Criminal Action Number  
ARDIT FERIZI : 1:16-CR-42  
Defendant. :  
:

Washington, D.C.  
September 23, 2016

The above-entitled jury trial was continued before the Honorable Leonie M. Brinkema, United States District Judge.

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## PROCEEDINGS

09:14:52 3 THE DEPUTY CLERK: Criminal case number

09:14:53 4 1:16-CR-42, United States versus Ardit Ferizi. Would

09:15:00 5 counsel please note their appearances for the record?

09:15:04 6 MR. VAN GRACK: Good morning, Your Honor.

09:15:06 7 Brandon Van Grack and Gregory Gonzalez on behalf of the

09:15:10 8 United States.

09:15:11 9 THE COURT: Good morning.

09:15:11 10 MS. MULLIN: Good morning, Your Honor. Elizabeth

09:15:13 11 Mullin and Jeremy Kamens on behalf Ardit Ferizi.

09:15:22 12 THE COURT: We'll have our interpreter confirmed

09:15:25 13 while we're waiting for the defendant.

09:15:29 14 (Interpreter sworn.)

09:15:43 15 THE COURT: Ms. Mullin, who is going to be

09:15:45 16 speaking for the defendant?

09:15:48 17 MS. MULLIN: I am, Your Honor.

09:15:49 18 THE COURT: All right. So have you had enough

09:15:50 19 time to go over the presentence report yourself and with

09:15:53 20 your client?

09:15:54 21 MS. MULLIN: Yes, Your Honor.

09:15:54 22 THE COURT: All right. Are there any factual

09:15:55 23 corrections, additions, deletions of any sort you want to

09:16:01 24 make to the report itself?

09:16:01 25 MS. MULLIN: No, Your Honor.

09:16:01 1                   THE COURT: All right. Now I know there's some  
09:16:05 2 dispute about how the guidelines were calculated. The  
09:16:08 3 probation office has calculated the offense level here as  
09:16:10 4 a level 40. Because your client has received the  
09:16:14 5 terrorism enhancement under 3A1.4 of the guidelines, his  
09:16:18 6 criminal history is ranked at a level six. That  
09:16:20 7 establishes an advisory guideline range of 360 months to  
09:16:24 8 life. Although, the statutory maximum is 20 years of the  
09:16:30 9 offense.

09:16:31 10                  There are two counts of conviction here: Count  
09:16:33 11 two, which is a material support count has a supervised  
09:16:40 12 release term ranging from one year to life. The unlawful  
09:16:43 13 access to computer, which is Count 3, the supervised  
09:16:48 14 release range there is one to three years. The fine range  
09:16:50 15 here is \$25,000 to \$250,000 and there's a 100 to 200  
09:16:55 16 dollars of special assessments because there are two  
09:16:56 17 counts of conviction. Correct?

09:16:58 18                  MS. MULLIN: Correct.

09:16:59 19                  THE COURT: I'll hear first from the United  
09:17:01 20 States.

09:17:02 21                  MR. VAN GRACK: Your Honor, in this case the  
09:17:05 22 Government is seeking a sentence of 25 years, which is the  
09:17:08 23 most permitted by statute, because the defendant's conduct  
09:17:12 24 has definitely put the lives of 1300 military members and  
09:17:17 25 Government employees at risk.

09:17:19 1                   With the Court's permission, I would like to  
09:17:21 2                   focus first on the 3553 factors because the guidelines,  
09:17:25 3                   with one or two exceptions, are largely in agreement but  
09:17:28 4                   there are significant disagreements between the parties on  
09:17:31 5                   those 3553 factors.

09:17:33 6                   THE COURT: All right.

09:17:35 7                   MR. VAN GRACK: And I think reading these two  
09:17:37 8                   position papers, it would almost seem like you're dealing  
09:17:40 9                   with two different individuals and two different crimes.  
09:17:43 10                  The Government represents that this is an individual who  
09:17:46 11                  is a hacker who used those skills to support a terrorist  
09:17:49 12                  organization and has put these 1300 lives at risk for the  
09:17:53 13                  foreseeable feature.

09:17:55 14                  The defense counsel is representing that this is  
09:17:56 15                  simply a hacker who made a single mistake, was on drugs,  
09:17:59 16                  and didn't realize what he was doing. And these two  
09:18:02 17                  images -- there's no middle ground in terms of what the  
09:18:04 18                  defendant's conduct was.

09:18:06 19                  And so I would like to first discuss one of the  
09:18:09 20                  representations in terms of the defendant's motive  
09:18:13 21                  represents in his letter to the Court that he was not an  
09:18:20 22                  ISIL supporter, he was not loyal to ISIL. But that's  
09:18:20 23                  disconnected with the facts in this case and those facts  
09:18:23 24                  come directly from the defendant's actions and his words.

09:18:25 25                  In April 2015 he on his own develops a Website

09:18:29 1 to post ISIL videos and other propaganda. This isn't a  
09:18:35 2 single instance, this is not something that on a single  
09:18:37 3 day he just developed. He registers this Website, he  
09:18:40 4 creates the infrastructure for the Website, he ensures  
09:18:43 5 that it is able to post these videos, he has  
09:18:45 6 communications with members of ISIL without this Website.  
09:18:49 7 It's not just the creation of the Website, it is his words  
09:18:52 8 with respect to that Website.

09:18:54 9 The Government provided some excerpts of  
09:18:57 10 communications that the defendant had with individuals who  
09:19:00 11 were against ISIL and challenged the defendant on why he  
09:19:04 12 was allowing the Website -- why he was supporting the  
09:19:06 13 Website that posted these videos. And it is actually --  
09:19:09 14 even though the Government only provided a few  
09:19:12 15 conversations, these are debates, these are conversations  
09:19:14 16 with multiple individuals that occurs over a lengthy  
09:19:17 17 period of time. And in these conversations the defendant  
09:19:21 18 is constantly supporting ISIL, defending ISIL when  
09:19:27 19 challenged about beheadings. He explains that ISIL  
09:19:29 20 wouldn't kill someone without justification.

09:19:31 21 Most importantly, there's a discussion where he  
09:19:33 22 is challenged about a posting in March of 2015 by a group  
09:19:37 23 called the Islamic State Hacking Division and a well known  
09:19:42 24 ISIL recruiter and facilitator named Junaid Hussain. And  
09:19:44 25 in that post there was a kill list listing 100 service

09:19:48 1 members and their addresses. And this individual

09:19:51 2 challenges the defendant on the justification why -- "How

09:19:55 3 could you justify this behavior?" And the defendant says,

09:19:58 4 "Well those people, the U.S. Military, they're the ones

09:20:01 5 who are killing people in Iraq and Syria."

09:20:04 6 Perhaps what's most important about those

09:20:07 7 communications are that these are private communications.

09:20:09 8 This isn't something that was posted in a public forum.

09:20:12 9 This isn't something that was forwarded to ISIL. These

09:20:16 10 are communications with multiple people where no one else

09:20:19 11 is aware of what he's saying. And yet, in these

09:20:22 12 conversations, if he wasn't an ISIL supporter, he didn't

09:20:24 13 have to respond to them. He could have said, "Well, I was

09:20:28 14 high one day. I didn't know what I was doing." But

09:20:29 15 instead he has a vigorous defense of ISIL in each and

09:20:33 16 every instance.

09:20:34 17 But it's not just the Website, as the Court is

09:20:36 18 aware, because during that period of time after he creates

09:20:40 19 this Website he decides that he wants to ratchet up that

09:20:44 20 support to ISIL to actually figuring out a way to assist

09:20:47 21 in their task, to assist in this harm. And so on June

09:20:52 22 13th he hacks into a companies Website. And on his own,

09:20:56 23 as he's looking through this data, he's trying to figure

09:21:00 24 out what information here can help ISIL. And he knows

09:21:04 25 this already because he's seen the videos. He saw that

09:21:07 1 March 2015 post from Junaid Hussain that had this kill  
09:21:11 2 list of 100 service members. He's aware of the statements  
09:21:14 3 that ISIL has made before. And so as he's looking through  
09:21:19 4 this customer data base, in his mind is, "What can I do to  
09:21:21 5 support ISIL?" And so on his own he looks for e-mail  
09:21:25 6 addresses that end in .gov and .mil. And he codes that  
09:21:28 7 information to identify ultimately the 1300 individuals  
09:21:31 8 who are members of the military and U.S. Government. And  
09:21:34 9 as soon as he finds this information the first thing he  
09:21:37 10 does he reaches out to ISIL, he reaches out to Junaid  
09:21:40 11 Hussain.

09:21:41 12 And again, it's not just his actions but his  
09:21:43 13 words. And the Government provided a transcript of those  
09:21:46 14 conversations that he had with Junaid Hussain. And it's  
09:21:49 15 clear from those conversations what Junaid Hussain and  
09:21:54 16 Ardit Ferizi was going to do with this information. They  
09:21:57 17 talk about creating a hit list, that this information  
09:21:59 18 would hit them hard. To the extent there's any doubt in  
09:22:03 19 the defendant's mind of the purpose of what this  
09:22:05 20 information is, it's answered in that conversation with  
09:22:08 21 Junaid Hussain.

09:22:11 22 Defense counsel represents that this was again  
09:22:13 23 the defendant just bragging, that he just wanted to show  
09:22:17 24 off his hacking skills. But the conversation with Junaid  
09:22:20 25 Hussain did not only occur on June 13th. The

09:22:23 1 conversations continued days after. They continue to talk

09:22:27 2 June 14th, June 15th trying to verify that this

09:22:30 3 information is accurate. The defendant on his own reaches

09:22:34 4 out to Junaid Hussain, wants to know how things are in the

09:22:37 5 Islamic State. And I think it's telling that on the day

09:22:41 6 that the Islamic State Hacking Division and Junaid Hussain

09:22:45 7 posted this information on August 11th, an individual

09:22:48 8 reaches out to Junaid Hussain and asks about the

09:22:52 9 whereabouts of Ardit Ferizi. And Junaid Hussain says,

09:22:55 10 "He's been busy. He's on our team." And it is indicative

09:22:59 11 of the fact that this isn't something where the defendant

09:23:00 12 simply passed information and walked away, but this is a

09:23:03 13 collaboration. This is an effort between Junaid Hussain

09:23:05 14 and Ardit Ferizi to harm these individuals.

09:23:08 15 The defendant, to justify his actions, explains

09:23:13 16 he asked the Court to believe a story in which there is a

09:23:19 17 journalist who wrote a false story about his support for

09:23:23 18 ISIL and he was mad, he was embarrassed he says that this

09:23:28 19 story falsely accused him of supporting ISIL. And so he

09:23:29 20 goes to the U.S. Embassy and finds that the U.S. Embassy

09:23:33 21 is unable to assist him. And that's the genesis of his

09:23:36 22 support for ISIL.

09:23:38 23 The Government submits that this is just a

09:23:39 24 nonsensical explanation. He asked the Court to believe

09:23:43 25 that he supported ISIL because he was so mad at being

09:23:49 1 falsely accused of supporting ISIL. It's indicative of  
09:23:54 2 the defendant not taking responsibility for his conduct  
09:23:57 3 and misrepresenting the motives for his conduct. But,  
09:24:01 4 motives are one piece. The perhaps even larger piece here  
09:24:05 5 is the actual harm. There's again a large gap between the  
09:24:09 6 Government's representations as to who was harmed and how  
09:24:13 7 they were harmed in the defense counsel's representations.  
09:24:15 8 And in this case, as the Government represents,  
09:24:19 9 the information here on these 1300 people, this wasn't  
09:24:23 10 publicly available information. A lot of this information  
09:24:26 11 -- in fact there's no evidence at all in the record that  
09:24:28 12 this information, all this information was public.  
09:24:30 13 There's no question that some of that information is  
09:24:33 14 publicly available. There's also no question that on the  
09:24:36 15 Internet there's lots of information about us that maybe  
09:24:39 16 perhaps we would otherwise not want to be available. But,  
09:24:42 17 that's not the facts in this case.  
09:24:44 18 Even if they were, Your Honor, even if all this  
09:24:47 19 information was publicly available, it misses the point  
09:24:52 20 that all the information that was necessary was  
09:24:55 21 information that would identify the person, who they  
09:24:58 22 worked for, and where they lived because this was a hit  
09:25:02 23 list. The point of this list was to find these  
09:25:04 24 individuals and harm them, "to strike out their nets."  
09:25:08 25 Those are Junaid Hussain's words. And so, even if -- the

09:25:12 1 defense counsel says, "Well, there weren't social security  
09:25:15 2 numbers." This wasn't about stealing money from these  
09:25:19 3 people. This is about finding them and harming them.  
09:25:22 4 And the defendant, in terms of the value of this  
09:25:24 5 information, it's clear from the defendant's own words and  
09:25:27 6 his own actions he says in his letter to the Court that  
09:25:30 7 when he saw the post he felt bad for these people because  
09:25:34 8 they were so scared. Well, if this information wasn't  
09:25:37 9 sensitive why were they scared. What were they scared of  
09:25:41 10 if this information was just floating on the Internet and  
09:25:44 11 they were fully aware of it?  
09:25:46 12 And in fact from his conversations with Junaid  
09:25:48 13 Hussain it's the same thing. When the defendant finds  
09:25:50 14 this information and provided it to Junaid Hussain, Junaid  
09:25:53 15 Hussain doesn't say, "Well, thanks I have a few hundred  
09:25:56 16 other names I'm working on, but I'll get to your list.  
09:26:00 17 He's excited about it. His reaction. And the Court has  
09:26:02 18 seen those conversations. This is something where this is  
09:26:05 19 a big deal. They are aware of the fact that this  
09:26:07 20 information is information that would be useful for people  
09:26:09 21 who are unable to travel to a war zone and are seeking to  
09:26:13 22 do harm here in the United States.  
09:26:14 23 And this entire conversation on what the  
09:26:19 24 information is it misses an even larger point, because  
09:26:22 25 it's not what the information is but what they did with

09:26:25 1 the information. Which is, ISIL took these names and told  
09:26:29 2 the supporters to find them and harm them. They have  
09:26:33 3 permanently put a target on the backs of these  
09:26:36 4 individuals. And so, the truth is if anyones name and  
09:26:41 5 their location is on something called an "ISIL hit list,"  
09:26:45 6 an "ISIL kill list," that alone is enough to invoke fear  
09:26:50 7 rightly so in those individuals.

09:26:51 8                   This isn't a hypothetical situation. Even in  
09:26:54 9 this district there's already been someone who was  
09:26:56 10 arrested for admitting for the fact that he drove by the  
09:27:00 11 homes of two individuals in Virginia whose names and  
09:27:04 12 addresses were on the kill list that Junaid Hussain posted  
09:27:07 13 in March of 2015. And the notion that again it's just the  
09:27:13 14 name, it's just a posting, is, I think, captured by one of  
09:27:16 15 the victim letters. Obviously I won't say the individuals  
09:27:20 16 name, but the individual says that she now lives in the  
09:27:24 17 state of fear when she interacts with Muslims and she  
09:27:27 18 feels guilty about that but she doesn't know exactly  
09:27:32 19 what -- when this harm will go away. And most importantly  
09:27:34 20 in that letter she doesn't decry the fact that her e-mail  
09:27:38 21 address was used or phone number. She says that its her  
09:27:41 22 name. She says that she has a unique last name that just  
09:27:44 23 knowing that ISIL has marked her, just knowing her name is  
09:27:48 24 enough for an individual to find and locate her.

09:27:51 25                   This disconnect between the harm that the

09:27:55 1 defendant's conduct has caused and between the parties, I  
09:27:59 2 think, also drives their references to similar situated  
09:28:02 3 defendants, similar sentences. And as the Government can  
09:28:06 4 see, this is not a case that is easy to button hold it,  
09:28:09 5 easy to compare to other cases. And part of that is  
09:28:11 6 because of the number of victims. It is rare that you  
09:28:15 7 have a case where there are this number of individuals who  
09:28:17 8 have been directly harmed by an individuals conduct. And  
09:28:21 9 part of it is also because of the medium he used. We're  
09:28:25 10 used to situations where an individual here in the United  
09:28:28 11 States commits some sort of -- facilitate some kind of  
09:28:34 12 violent act or travel to a war zone. And because the  
09:28:36 13 individual used his hacking skills into a computer he was  
09:28:39 14 thousands of miles away. But that doesn't change the fact  
09:28:42 15 that at the core of what he did was provide information  
09:28:46 16 that would allow others to facilitate an attack.

09:28:50 17 One of the cases that seems most analogous is  
09:28:52 18 the *Chessser* case, which was here in this District where  
09:28:54 19 the individual was sentenced to 25 years. And there were  
09:28:57 20 a number of ways the individual provided support to ISIL  
09:29:01 21 as there is in this case. But one of the main things that  
09:29:03 22 *Chessser* did was provide information on nine individuals  
09:29:06 23 and instruct people to go kill them. And one of the main  
09:29:10 24 differences is, whereas there were nine victims in the  
09:29:12 25 *Chessser* case, here there are 1300.

09:29:15 1 There's another case in the Western District of  
09:29:18 2 New York, *Elfgeeh*, E-L-F-G-E-E-H. In which an individual  
09:29:22 3 a few months ago was sentenced to 22-and-a-half years.  
09:29:26 4 And like the defendant the individual posted propaganda.  
09:29:30 5 He also attempted to facilitate the travel of three  
09:29:34 6 individuals to Iraq and Syria. Two of those individuals  
09:29:38 7 were working, I believe, as FBI sources and never  
09:29:41 8 travelled. But again, you have a comparison of a  
09:29:45 9 facilitation of an attack that's someone who was located  
09:29:48 10 here but is still a facilitation.

09:29:50 11 The cases that the defendant talks about, I  
09:29:52 12 believe *Farrokh* and *Amin* are two of those cases. In each  
09:29:57 13 of those cases there are no victims. There are no victims  
09:30:00 14 that are identified in any case. For *Farrokh*, an  
09:30:03 15 individual who was trying to travel to Iraq and Syria. He  
09:30:07 16 never travelled there. No one was harmed by his conduct.  
09:30:11 17 That's not to say his conduct wasn't serious. But again,  
09:30:14 18 in this case we have 1300 victims.

09:30:17 19 I would like to just briefly talk about some of  
09:30:23 20 the characteristics of the defendant. Although it was in  
09:30:26 21 our position paper, there are two points that were not  
09:30:27 22 there that I would like to stress before the Court. One  
09:30:33 23 concerns the acceptance of responsibility. And I think  
09:30:35 24 it's a key point reading the defendant's letter to this  
09:30:37 25 Court, because it is indicative of someone who has failed

09:30:39 1 to accept responsibility for his conduct. He blames  
09:30:43 2 drugs. He discusses this being sort of a momentary laps  
09:30:48 3 of judgment and the facts are to the contrary. And he  
09:30:51 4 also comes up with really a nonsensical story to explain  
09:30:55 5 why he got involved in ISIL in the first place.

09:30:57 6 The second point the Government would like to  
09:30:59 7 raise concerns his criminal history. And in his  
09:31:03 8 submission paper he discusses that in 2013 he was in  
09:31:08 9 trouble for hacking a Kosovo Government database and  
09:31:11 10 received an alternative sentence. And we would like to  
09:31:15 11 submit to the Court what the Government has marked as  
09:31:18 12 Government Exhibit 1. It's been provided to defense  
09:31:20 13 counsel before. And I would not read from this document  
09:31:25 14 because it concerns -- if I may. Thank you.

09:31:32 15 THE COURT: And you're filing it under seal?

09:31:36 16 MR. VAN GRACK: Yes, Your Honor. It's a  
09:31:38 17 document from the Kosovo police. And in it it details 10  
09:31:44 18 different incidents, criminal incidents, involving the  
09:31:47 19 defendant. And the point of this is not to get into each  
09:31:50 20 of those details, because the Government isn't fully aware  
09:31:53 21 of those details. But it's to bring to the Court's  
09:31:57 22 attention that this is not someone who just in a single  
09:31:58 23 instance hacked a Government database and was in trouble.  
09:32:02 24 This is someone who, over multiple years, was engaged in  
09:32:05 25 multiple actions including criminal activity more than

09:32:09 1 just hacking into a Government database.

09:32:12 2 And one of the reasons we bring this to your

09:32:14 3 attention, Your Honor, because one of the representations

09:32:17 4 in the defendant's position paper is that he is unlikely

09:32:19 5 to reoffend. Well, the point is he's already reoffended

09:32:22 6 over and over and over again. The defendant was already

09:32:25 7 given a second chance. He received an alternative

09:32:28 8 sentence. And he took that chance and instead he engaged

09:32:33 9 in hacking again but this time that hacking actually

09:32:36 10 harmed individuals.

09:32:37 11 THE COURT: All right. Just so I can understand

09:32:39 12 this exhibit. It appears as though it addresses incidents

09:32:43 13 going back to 2011. Is that -- am I reading that

09:32:45 14 correctly?

09:32:46 15 MR. VAN GRACK: Yes, Your Honor. And

09:32:47 16 admittedly, a lot of this is in Albanian. But there's

09:32:50 17 enough in English, I think, to get the point across.

09:32:53 18 THE COURT: The point is he would have been 15

09:32:53 19 years old at the time.

09:32:54 20 MR. VAN GRACK: The reason why this is under

09:32:54 21 seal, all of this conduct was when he was a juvenile,

09:32:57 22 which is why we're not getting into the specifics of that

09:33:00 23 conduct.

09:33:01 24 THE COURT: All right.

09:33:02 25 MR. VAN GRACK: Your Honor, to briefly talk

09:33:06 1 about the guidelines. As the Court has already reported,  
09:33:12 2 the probation office has calculated them to be an offense  
09:33:15 3 level 40 and criminal history six, which the Government  
09:33:17 4 agrees with.

09:33:18 5 There appear to be two points, two issues that  
09:33:21 6 the defense counsel has with respect to that calculation.  
09:33:24 7 The first is that there should not be two points awarded  
09:33:29 8 -- a two level adjustment under 2M5.3, because the  
09:33:35 9 defendant didn't intend or has reason to believe that his  
09:33:37 10 support would cause a violent act. And I think the  
09:33:41 11 Government has addressed that in its prior points.

09:33:45 12 The larger question that defense counsel raises  
09:33:49 13 is they seek a downward departure under 4A1.3. Arguing  
09:33:52 14 that the criminal history six overstates the defendant's  
09:33:55 15 criminal history. The Government's position is that this  
09:33:58 16 downward departure should not be applied to terrorism  
09:34:03 17 cases. Under 3A1.4 in the terrorist enhancement,  
09:34:06 18 individuals whose conduct is connected to a crime of  
09:34:09 19 terrorism automatically received this bump to criminal  
09:34:12 20 history number six. And the downward departure in 4A1.3,  
09:34:18 21 the factors the Court are to consider is whether it  
09:34:18 22 overstates their criminal history or overstates their  
09:34:22 23 ability to reoffend. Well, that's almost every terrorist  
09:34:25 24 because they are automatically moved to criminal history  
09:34:28 25 six. And so under the defense counsel's interpretation in

09:34:33 1 almost every terrorism case, it eliminates that automatic  
09:34:37 2 enhancement. And so it actually eliminates the entire  
09:34:39 3 purpose of that enhancement was to identify the  
09:34:41 4 seriousness of a terrorism offense.

09:34:44 5 But even if the Court believes that it can be  
09:34:47 6 applied in a terrorism case, the Government's position is  
09:34:49 7 this is not the case for a downward departure to be  
09:34:52 8 applied. This is an individual that has permanently put  
09:34:56 9 the lives of 1300 individuals at risk and this is also  
09:35:00 10 someone who has shown that he is a reoffender and someone  
09:35:03 11 who is likely reoffend again. And for this reason the  
09:35:06 12 Government ask that he be sentenced to 25 years. Thank  
09:35:08 13 you.

09:35:08 14 THE COURT: Okay. Thank you. Ms. Mullin.

09:35:14 15 MS. MULLIN: Your Honor, if it's okay I'll start  
09:35:15 16 with the 3553(a) factors as well.

09:35:18 17 Your Honor, Mr. Ferizi wants the Court to know  
09:35:21 18 that he renounces ISIL, he has never been loyal to ISIL,  
09:35:25 19 and he does not embrace what ISIL stands for. Throughout  
09:35:27 20 this process from his extradition from Malaysia to this  
09:35:31 21 country and up until here today he has expressed nothing  
09:35:34 22 but respect for the laws of the United States.

09:35:36 23 It is important to remember that Mr. Ferizi was  
09:35:38 24 just a teenager when he committed these offenses and he is  
09:35:42 25 now doing everything he can to return to his family and

09:35:45 1 his community in Kosovo, who as the Court can see from the  
09:35:49 2 letters submitted, love him and are waiting for him to  
09:35:51 3 return.

09:35:51 4 Now Mr. Ferizi doesn't dispute that he was  
09:35:55 5 active online. And he spent most of his days online in  
09:35:59 6 his dorm room in Malaysia. And he doesn't dispute that he  
09:36:05 7 made hyperbolic comments about ISIL to members of ISIL and  
09:36:07 8 that he was interested in ISIL.

09:36:09 9 He also pursued pedophiles online, communicated  
09:36:14 10 with romantic interest and donated to the Democratic party  
09:36:18 11 of the United States. We submit that his online  
09:36:22 12 activities, though they do events a juvenile who was  
09:36:27 13 bragging and showing off and trying to feel cool, we  
09:36:32 14 submit that his online activities show that he was not  
09:36:34 15 motivated by radical ideology. And indeed he never  
09:36:38 16 planned to go fight for ISIL as many materials support  
09:36:41 17 defendants do. He never made any real plans to fight or  
09:36:45 18 to do anything other than sort of his virtual  
09:36:49 19 communications with ISIL. In fact, he rebuffed  
09:36:55 20 invitations to go fight in Syria.

09:36:57 21 Now the Government calls his explanation for his  
09:37:00 22 conduct nonsensical. We agree it is nonsensical. It is a  
09:37:04 23 nonsensical because he was a confused teenager with  
09:37:07 24 confused motivations. The Government doesn't dispute that  
09:37:09 25 there was a journalist in Kosovo that posted a piece about

09:37:12 1 Mr. Ferizi saying he went to go fight in Syria. This  
09:37:16 2 deeply embarrassed his family. And the Court can see that  
09:37:19 3 from the letters from Mr. Ferizi's mother and father they  
09:37:23 4 were embarrassed, they were ashamed.

09:37:25 5 Mr. Ferizi had just started a new university as  
09:37:26 6 a freshman, or their version of a freshman. He's 18 or 19  
09:37:32 7 years old, he feels his social life is ruined, people are  
09:37:35 8 laughing at him and calling him a terrorist. And so, his  
09:37:39 9 motivation was nonsensical. It was a completely  
09:37:42 10 nonsensical juvenile, unconsidered response to then go and  
09:37:48 11 assist ISIL in the way he did and to sort of communicate  
09:37:52 12 with ISIL as a way to, in his mind, get back at the United  
09:37:56 13 States Embassy for not removing the smear post. And so it  
09:38:00 14 was nonsensical because he was a nonsensical misguided  
09:38:05 15 teenager who really didn't know what he was doing.

09:38:08 16 And so it's not that he's not -- he's not  
09:38:12 17 accepting responsibility. He accepts responsibility for  
09:38:16 18 his actions, but that truly is his explanation for what he  
09:38:18 19 did. And the Government is right it doesn't make sense  
09:38:21 20 because he was a juvenile. And so that was his motivation  
09:38:29 21 underscores that he really truly wasn't motivated by a  
09:38:35 22 deep-seated radical ideology.

09:38:38 23 Your Honor, in any case involving material  
09:38:38 24 support of a designated terrorist group like ISIL, it's  
09:38:43 25 not hard because of the horrible offenses perpetrated by

09:38:45 1 ISIL to assume the worse about a defendant and evaluate  
09:38:48 2 his conduct by imagining the worse possible outcome that  
09:38:48 3 could result from it no matter how remote the risk of that  
09:38:56 4 outcome is. And that's essentially what the Government  
09:38:56 5 has done by stating that these 1300 victims, whose e-mail  
09:39:00 6 address were sent, are marked as enemies of ISIL.

09:39:04 7 THE COURT: Well, how do you address the  
09:39:06 8 argument that here in Northern Virginia there apparently  
09:39:10 9 has been evidence that -- that people on this list or at  
09:39:13 10 least one person on this list, has in fact felt actual  
09:39:18 11 threats?

09:39:21 12 MS. MULLIN: This is -- we don't dispute that  
09:39:21 13 the victims experienced fear and will continue to. And  
09:39:26 14 Mr. Ferizi has apologized for that and he will and he  
09:39:30 15 should be punished for that. However, the reality of it,  
09:39:32 16 if you look at what he did calmly and soberly, but the  
09:39:36 17 reality of the information he sent really could not  
09:39:38 18 facilitate an individual specific attack. He did not send  
09:39:42 19 addresses. He did not send home addresses. He did not  
09:39:46 20 send work addresses. He did not send specific whereabouts  
09:39:50 21 as to where these people might be in any given day.

09:39:53 22 As so, he did send passwords, but of course that  
09:39:56 23 information is moot now as the passwords has been changed.  
09:39:59 24 So, while the individuals rightly and understandably  
09:40:05 25 experience fear, the information that he sent, if you

09:40:10 1 really think about it, could not anymore than any other  
09:40:13 2 information out there in the world, could not facilitate  
09:40:16 3 or assist in a specific attack on any one individual. The  
09:40:20 4 value of the material that he sent is in its propaganda's  
09:40:26 5 message. And I think that there's a distinction there in  
09:40:28 6 that what he did supported propaganda, but what he did not  
09:40:34 7 support or facilitate or wasn't even able to facilitate a  
09:40:37 8 specific violent attack.

09:40:38 9 And so that distinction, I think, is important  
09:40:41 10 when we think about material support cases because it's  
09:40:43 11 different than someone who targets a location and gives  
09:40:47 12 specific information that can assist in an actual physical  
09:40:51 13 attack on an individual on a specific location.

09:40:55 14 So what he gave essentially -- I mean anyone can  
09:40:57 15 look on the Internet and find a name. And unlike Adam  
09:41:01 16 Chesser he didn't send an address or a where about, or a  
09:41:06 17 time, or a method. And so I think there is a distinction  
09:41:10 18 there when you really consider the information he sent and  
09:41:13 19 the value of it.

09:41:13 20 Again, Mr. Ferizi does not mean to undermine the  
09:41:24 21 fear that the victims experienced. I don't think I -- I  
09:41:28 22 take issue with the idea he hasn't accepted  
09:41:32 23 responsibility. He has in many ways and in many ways that  
09:41:36 24 are submitted in our under sealing filing, in our redacted  
09:41:39 25 filing. And he will be punished for the harm that he

09:41:43 1 committed, which is the psychological harm and the  
09:41:46 2 propaganda value of the information or message that he  
09:41:52 3 sent. But I submit that he shouldn't be punished for a  
09:41:55 4 harm that he has not caused, a speculative and remote  
09:41:57 5 harm.

09:41:57 6 Materials support an extraordinary broad statute  
09:42:01 7 and it encompasses an extraordinarily broad amount of  
09:42:04 8 conduct. And in some cases defendants who are convicted  
09:42:07 9 commit specific acts of violence themselves or intend to  
09:42:12 10 go fight for -- intend to fight in Syria for ISIL or  
09:42:15 11 elsewhere and seek to join terrorist groups.

09:42:19 12 This is not one of those cases. Mr. Ferizi was  
09:42:22 13 existing in a totally virtual world. He was a teenager.  
09:42:26 14 He never intended to fight for ISIL. He never intended to  
09:42:29 15 commit or assist in a violent attack on any one  
09:42:32 16 individual. And for those reasons we submit that the  
09:42:34 17 sentence we requested of 72 months is appropriate.

09:42:37 18 Briefly, with respect to the guidelines, we  
09:42:42 19 agree that the terrorism has been applied technically.  
09:42:46 20 However, there's nothing in the guidelines to suggest that  
09:42:49 21 4A1.B3 would preclude the Court from granting a downward  
09:42:55 22 departure in terrorism cases. And while Mr. -- Mr. Ferizi  
09:42:58 23 has never disputed that he engaged in hacking activities  
09:43:03 24 as a youth, as a juvenile, in Kosovo, as the Court knows,  
09:43:05 25 he didn't serve any time for those. So technically under

09:43:06 1 the guidelines he would be in category one.

09:43:09 2                   Additionally, Your Honor, the reason why I think

09:43:14 3 4A1.3 could apply to terrorism cases is because the

09:43:17 4 terrorism enhancement itself is so broad. It clumps

09:43:22 5 together all defendants accused of terrorism regardless of

09:43:25 6 distinctions in their level -- the level of their material

09:43:29 7 support, the quality of their material support, the

09:43:30 8 duration of their support of a terrorist organization.

09:43:35 9 And so that's why I think that a guideline such as 4A1.3

09:43:38 10 does apply in cases where the terrorism enhancement is so

09:43:42 11 draconian and so broad as to sweep all defendants accused

09:43:46 12 of terrorist activity into its net.

09:43:48 13                   All right. Thank you.

09:43:50 14                   THE COURT: All right. Are there any victims

09:43:53 15 who want to be heard?

09:43:55 16                   For the record, the Court has reviewed the

09:43:57 17 numbers of letters that were submitted by the Government

09:44:01 18 in supports of its position as well as the letters that

09:44:05 19 were submitted on behalf of Mr. Ferizi. All right, Mr.

09:44:09 20 Ferizi come up to the lectern.

09:44:17 21                   THE DEFENDANT: Yes, Your Honor.

09:44:17 22                   THE COURT: This is your opportunity to say

09:44:19 23 anything you would like the Court to consider before the

09:44:22 24 sentence is imposed.

09:44:22 25                   THE DEFENDANT: Yes, Your Honor. I feel so bad

09:44:24 1 for what I did. I take full responsibility for that. And

09:44:28 2 I'm very sorry for what happened for making people scared.

09:44:31 3 So that's what I have to say.

09:44:34 4 THE COURT: Do you have any true understanding

09:44:38 5 of what you actually did?

09:44:40 6 THE DEFENDANT: Yes, Your Honor.

09:44:41 7 THE COURT: And I'm still not sure. Why did you

09:44:43 8 do it?

09:44:44 9 THE DEFENDANT: I don't know, Your Honor. Doing

09:44:48 10 something fast. It wasn't something like -- it was

09:44:51 11 something -- happened very fast.

09:44:53 12 THE COURT: It didn't happen that fast. You're

09:44:56 13 communicating back and forth over a period of time, aren't

09:44:59 14 you?

09:44:59 15 THE DEFENDANT: Yes, Your Honor. It's coming

09:45:01 16 from 2015. Usually it starts in March. I started to chat

09:45:05 17 with a girl. She was supporting ISIS online and then I

09:45:11 18 got involved in -- in their chats. So, yeah.

09:45:17 19 THE COURT: Well, this was a case where it

09:45:19 20 wasn't a one time incident. You had plenty of time to

09:45:22 21 think about what was going on. Now I am not insensitive

09:45:27 22 to the fact that you're only 20 years old. You obviously

09:45:30 23 have a certain talent for working on the computer. You've

09:45:34 24 been able to hack into Government databases at least since

09:45:38 25 the age of 15.

09:45:39 1                   And I think your youth and also the significant  
09:45:43 2                   mental health information, which was provided by the  
09:45:45 3                   Government, are factors that it is appropriate for the  
09:45:49 4                   Court to consider. At the same time you are 20 years old  
09:45:52 5                   so you're not a child any longer. And you had the  
09:45:55 6                   opportunity when you had those first rounds of issues with  
09:45:58 7                   the courts in Kosovo to have this issue addressed.

09:46:03 8                   I recognize that there's much science these days  
09:46:06 9                   that the brain of human beings is not fully developed  
09:46:11 10                   frankly until people are in their mid-20's which explains,  
09:46:15 11                   in some peoples eyes, the reason why younger people tend  
09:46:17 12                   to be involved in a lot of criminal activity.

09:46:20 13                   But, that can't excuse this kind of conduct.  
09:46:22 14                   And I think the Government's representations about the  
09:46:25 15                   impact that this kind of conduct had on 1300, absolutely  
09:46:30 16                   innocent, victims cannot be ignored by the Court. It's  
09:46:33 17                   also extremely important to send messages to other young  
09:46:37 18                   people like yourself who has skills with computers that  
09:46:40 19                   playing around with computers is not a game. The hacking  
09:46:43 20                   into computer systems is becoming a major problem  
09:46:47 21                   throughout the world. And in fact, you know, cyber  
09:46:49 22                   warfare has become almost the latest and most serious area  
09:46:53 23                   of concern for many people in Government.

09:46:56 24                   And so what you did was extremely serious. And  
09:47:00 25                   the Court feels that the sentence has to reflect that.

09:47:04 1 And so, I am going to impose a sentence that is a slight  
09:47:08 2 variance from the guidelines. I'm going to accept the  
09:47:11 3 guidelines as they've been calculated, because I think  
09:47:13 4 they are correct given the facts of this case. But,  
09:47:16 5 because of your youth and what are some real serious  
09:47:20 6 mental health issues, some minor variance is appropriate.  
09:47:27 7 Not merely as much as defense counsel requested, however.  
09:47:28 8 The Court also did look at comparators. The  
09:47:31 9 ones that the Government and defense counsel gave the  
09:47:34 10 Court. I agree with the Government that the comparators  
09:47:38 11 whom the defense identified *Amin*, *Farrokh*, and *Coffman*  
09:47:43 12 none of those cases involved third party victims the way  
09:47:47 13 this one did. And although the defense has argued that  
09:47:50 14 the victims are not victims as -- as much as in the other  
09:47:54 15 case that the Government has cited, just having your name  
09:47:58 16 on a list knowing that you've been identified to a  
09:48:01 17 terrorist group, in my view, is sufficiently terrorizing  
09:48:06 18 for those people on the list. And their letters certainly  
09:48:09 19 attest to that fact.  
09:48:10 20 And the one person who has a very unique name,  
09:48:14 21 in particular, mentions that maybe the only name in that  
09:48:18 22 particular area would make it very easy to find that  
09:48:22 23 person. And the fact that they are basically on a hit  
09:48:24 24 list making them basically targets is very, very serious.  
09:48:27 25 Because of the need, among other things, for

09:48:31 1 general deterrence, the need to make sure this defendant  
09:48:34 2 is deterred from such future conduct, given his track  
09:48:37 3 record going back five or six years with hacking, the  
09:48:40 4 Court is satisfied that a total sentence of 240 months is  
09:48:44 5 sufficient but not greater than necessary to achieve the  
09:48:47 6 purposes of Section 3553(a). That sentence is composed of  
09:48:52 7 180 months on the material support count to be followed by  
09:48:56 8 60 months consecutive on the unlawful access to protected  
09:49:03 9 computer information for a total of 240 months.

09:49:07 10 Now the defendant will be given credit for the  
09:49:09 11 time he has been serving since October 12, 2015 when he  
09:49:13 12 was arrested in Malaysia. At the completion of the 240  
09:49:19 13 month sentence, the defendant will serve a period of 10  
09:49:21 14 years of supervised release on Count 2 and a period of  
09:49:25 15 three years of supervised release concurrent on Count 3.

09:49:30 16 The terms and conditions of your supervised  
09:49:33 17 release, Mr. Ferizi, are first of all your uniformed good  
09:49:37 18 behavior. That means you're not to violate any federal,  
09:49:40 19 state, or local laws while on supervision. Do you  
09:49:43 20 understand that?

09:49:43 21 THE DEFENDANT: Yes, Your Honor.

09:49:44 22 THE COURT: Secondly, you have to comply with  
09:49:45 23 all of the conditions of supervision, which will be  
09:49:48 24 explained to you by the probation office and explained to  
09:49:52 25 you by them as well. Do you understand that? And it will

09:49:52 1 be on the judgment order. Do you understand?

09:49:54 2 THE DEFENDANT: Yes, Your Honor.

09:49:55 3 THE COURT: Now there are a series of special

09:49:56 4 conditions. The first is, you will have to satisfactorily

09:49:59 5 participate in such mental health treatment as directed by

09:50:02 6 the probation office with an emphasis on

09:50:07 7 deradicalization. You will have to take any medication

09:50:09 8 and submit to any programs as directed by the probation

09:50:13 9 office. You must waive privacy rights that you have to

09:50:14 10 the mental health treatment so that probation officers can

09:50:17 11 monitor your progress and the Court will waive any cost of

09:50:21 12 that program. Do you understand that?

09:50:22 13 THE DEFENDANT: Yes, Your Honor.

09:50:23 14 THE COURT: Secondly, you must be drug free.

09:50:25 15 You will have to submit to drug testing in such in or

09:50:29 16 outpatient drug treatment as the probation office directs.

09:50:33 17 Do you understand that?

09:50:33 18 THE DEFENDANT: Yes, Your Honor.

09:50:34 19 THE COURT: You have to waive any privacy rights

09:50:35 20 that you have to the drug treatment program so it can be

09:50:37 21 monitored by the probation office and the Court will again

09:50:40 22 waive the cost of that program. Do you understand?

09:50:42 23 THE DEFENDANT: Yes.

09:50:43 24 THE COURT: You are not permitted to have any

09:50:45 25 contact or communications whatsoever with any known

09:50:49 1 terrorist, terrorist organizations, or any known hackers.

09:50:54 2 If it is determined that you have had such communication

09:50:57 3 whether it's by the Internet, by telephone, by letter in

09:51:01 4 any respect, you're in violation. Do you understand that?

09:51:03 5 THE DEFENDANT: Yes, Your Honor.

09:51:04 6 THE COURT: You cannot possess or use any

09:51:07 7 computer without having received permission from the

09:51:12 8 probation office and you will have to submit to such

09:51:14 9 monitoring technology as exist at the time you're released

09:51:19 10 so that the probation office can monitor any

09:51:20 11 communications you might have. Do you understand that?

09:51:22 12 THE DEFENDANT: Yes, Your Honor.

09:51:22 13 THE COURT: All right. And lastly, you have

09:51:25 14 to comply with any orders from the immigration authorities

09:51:29 15 as to your deportation. Do you understand that?

09:51:31 16 THE DEFENDANT: Yes, Your Honor.

09:51:32 17 THE COURT: If deported from the United States,

09:51:34 18 you are not allowed back in this country for any reason

09:51:37 19 whatsoever during that 10 year period. Should you return

09:51:41 20 to the United States in that 10 year period, you will have

09:51:43 21 two problems: One, you're in violation of this Court's

09:51:46 22 sentencing order and could be sentenced back to prison for

09:51:48 23 up to 10 years. Do you understand that?

09:51:49 24 THE DEFENDANT: Yes, Your Honor.

09:51:50 25 THE COURT: And secondly, the Government could

09:51:53 1 prosecute you for a new and separate crime called "illegal  
09:51:55 2 reentry after deportation" with a violent felony  
09:51:58 3 conviction on your record. Do you understand that?  
09:52:00 4 THE DEFENDANT: Yes, Your Honor.  
09:52:00 5 THE COURT: The Court finds, given your  
09:52:02 6 financial situation -- oh, there is an issue about  
09:52:05 7 restitution in this case, isn't there, from the victim?  
09:52:08 8 MR. VAN GRACK: Yes, Your Honor.  
09:52:10 9 THE COURT: Is there a restitution order that's  
09:52:13 10 been prepared?  
09:52:13 11 MR. VAN GRACK: No, it has not been prepared,  
09:52:15 12 Your Honor.  
09:52:15 13 THE COURT: Was there a reason why it is not  
09:52:17 14 done?  
09:52:17 15 MR. VAN GRACK: No. Unfortunately, the victim  
09:52:18 16 information, the specific victim information was late in  
09:52:23 17 being passed to the probation office and so the Government  
09:52:26 18 has not --  
09:52:26 19 THE COURT: What's the Government's position?  
09:52:28 20 My understanding it was in the plea agreement. Wasn't  
09:52:31 21 there an agreement to the restitution?  
09:52:33 22 MR. VAN GRACK: Well, in the statements of facts  
09:52:37 23 as well, Your Honor, I believe it is not contested. It  
09:52:37 24 was over \$40,000 in damages.  
09:52:41 25 THE COURT: The amended petition which has, I

09:52:44 1 think, \$100,000 for good will, I would not find  
09:52:49 2 appropriate. I don't think it's adequate documentation  
09:52:52 3 for the good will issue, is there?

09:52:53 4 MR. VAN GRACK: The Government will agree with  
09:52:55 5 that position, Your Honor.

09:52:56 6 THE COURT: All right. Ms. Mullin, have you had  
09:52:58 7 a chance to discuss the restitution issue with your client?

09:53:01 8 MS. MULLIN: Yes, in general terms. I will do  
09:53:02 9 so when a restitution order is submitted.

09:53:05 10 THE COURT: Is that going to be done today, the  
09:53:07 11 restitution order?

09:53:08 12 MR. VAN GRACK: Yes, Your Honor.

09:53:08 13 THE COURT: All right. I want to make sure we  
09:53:10 14 get that taken care of. And Mr. Ferizi, you understand  
09:53:13 15 than an additional condition of your supervision is that  
09:53:15 16 you're going to have to make a good faith effort to repay  
09:53:19 17 that money to the Arizona company whose computers you  
09:53:23 18 hacked?

09:53:24 19 THE DEFENDANT: Yes, Your Honor.

09:53:25 20 THE COURT: That's part of your plea agreement.  
09:53:27 21 Do you remember that?

09:53:27 22 THE DEFENDANT: Yeah, I think so, yeah.

09:53:29 23 THE COURT: I think?

09:53:31 24 THE DEFENDANT: I think, yes, I saw it.

09:53:33 25 THE COURT: All right. Because of the amount of

09:53:34 1 restitution and the length of this sentence, the Court  
09:53:37 2 finds the defendant does not have the financial resources  
09:53:40 3 to pay the cost of incarceration, cost of supervision, or  
09:53:43 4 any of the statutory fines.

09:53:45 5 However, there are \$200 in special assessments.  
09:53:48 6 Those must be paid. The defendant waived his right to  
09:53:51 7 appeal both his conviction and his sentence and his plea  
09:53:55 8 agreement as long as the sentence was not higher than the  
09:53:57 9 statutory maximum.

09:53:59 10 However, I still want to make sure Counsel you  
09:54:02 11 talk with your client about whether he wants to file an  
09:54:04 12 appeal. And obviously if he does, he will need to file  
09:54:07 13 it. All right. Is there anything further we need to  
09:54:09 14 address?

09:54:10 15 MR. VAN GRACK: No, Your Honor.

09:54:10 16 THE COURT: Anything further from defense  
09:54:12 17 counsel?

09:54:13 18 MS. MULLIN: No, Your Honor.

09:54:14 19 THE COURT: All right. The defendant is  
09:54:16 20 remanded.

09:54:17 21

09:54:18 22 **(Proceedings adjourned at 9:54 a.m.)**

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CERTIFICATE OF REPORTER

3 I, Tonia Harris, an Official Court Reporter for  
4 the Eastern District of Virginia, do hereby certify that I  
5 reported by machine shorthand, in my official capacity, the  
6 proceedings had and testimony adduced upon the Sentencing  
7 in the case of the **UNITED STATES OF AMERICA versus ARDIT**  
8 **FERIZI**, 1:16-CR-42, in said court on the 23rd day of  
9 September, 2016.

10 I further certify that the foregoing 34 pages  
11 constitute the official transcript of said proceedings, as  
12 taken from my machine shorthand notes, my computer realtime  
13 display, together with the backup tape recording of said  
14 proceedings to the best of my ability.

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Official Court Reporter

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